The Deputy Collector Revenue (South), Pondicherry and Others Vs Navasakthi Township Developers Pvt. Ltd.

Court: Madras High Court

Date of Decision: Oct. 30, 2015

Acts Referred: Constitution of India, 1950 - Article 166(1), 166(2), 239, 77(1), 77(2)
Contempt of Courts Act, 1971 - Section 2
Land Acquisition Act, 1894 - Section 11, 44A, 44-A

Hon'ble Judges: Satish K. Agnihotri and K.K. Sasidharan, JJ.

Bench: Division Bench

Advocate: G. Rajagopalan, Additional Solicitor General of India for Government Pleader, for the Appellant; T. Ramesh for S. Prem Auxilion Raj, for the Respondent

Judgement

Satish K. Agnihotri and K.K. Sasidharan, JJ.

1. The Government of Pondicherry acquired 5.60.50 hectares of land in 1978 invoking Part VII of the Land Acquisition Act, 1894 and allotted to

a private Company pursuant to an agreement which contain an enabling provision for resumption in the event of the Company being wound up.

The Company made use of the land, and carried on its manufacturing activities till it was wound up in 2001 with the permission of Government of

Pondicherry. The Government after the winding up of the affairs of the Company failed to exercise the option for resumption of acquired land from

the Company by invoking clause 3(c) of the agreement dated 20 January 1977 and kept the application submitted by the Company in 2006 for

permission for sale of land in abeyance without passing orders. The Company sold the land to the respondent in 2009. The erstwhile land owner

filed a suit in O.S. No. 138 of 2013 before the III Additional District Court, Pondicherry for invalidating the sale. The Mega Housing Project of

the respondent on the subject land was launched by those who were in the Governance of the Union Territory in 2010. Without passing orders for

resumption by the Government and pending suit in which Government is a party, the Deputy Collector (South) Pondicherry by order dated 23

September 2014 called upon the District Registrar to freeze the guideline register and treat the land as acquired land belonging to the Government.

Since notice was not issued before passing such orders involving civil consequences, and action itself was taken only after constructing 473

residential units on the strength of building permit issued by Pondicherry Planning Authority and sale and registration of 339 units in the name of

purchasers, the freezing order was quashed by the writ court at the instance of the respondent. This is the sum and substance of this intra court

appeal.

2. The Government of Pondicherry pursuant to the request made by the Pondicherry Papers Limited (hereinafter referred to as ""the Company""), a

private company registered under the Companies Act, acquired an extent of 5.60.50 hectares of land in Survey Nos. 108/1, 112/1, 112/2, 112/3,

112/4, 112/5 and 116A of Pillaiyarkuppam Village, Bahour Commune in the registration District of Pondicherry invoking Part VII of the Land

Acquisition Act, 1894. The acquisition was pursuant to the agreement dated 20 January 1977 executed between the Company and Government of

Pondicherry. The award under Section 11 of the Land Acquisition Act was passed on 15 June 1978.

3. The Company appears to have purchased another extent of twenty five acres directly from the land owners and established an Industry

manufacturing paper.

4. The Company, continued its operations till 1997. The Company appears to have stopped its activities with the permission of the Government of

Pondicherry in 2001.

5. The Company submitted applications dated 10 August 2006 and 3 February 2009 for permission of the Government of Pondicherry for sale of

the land allotted to it by the Government after acquisition.

6. During the currency of the applications for permission, the Company sold the land to the respondent.

7. The respondent after obtaining planning permission appears to have constructed 473 residential units and sold 339 units. The Sub Registrar duly

registered the sale documents executed by the respondent in favour of individual purchasers.

8. While so, the first appellant vide official note dated 23 September 2014 called upon the District Registrar, Pondicherry to freeze the guideline

value of the land and declare it as ""Acquired lands under land acquisition"".

9. The writ petition filed by the respondent in W.P. No. 27616 of 2014 challenging the action taken by the first appellant was allowed by the writ

Court. Feeling aggrieved, the appellants are before this Court.

10. The learned Additional Solicitor General on behalf of the appellants raised the following contentions:

(i) The land was acquired by the Government by resorting to the provisions of the Land Acquisition Act. Section 44-A of the Land Acquisition Act

1894 prohibits sale of land acquired for a company. The sale in favour of the respondent by Pondicherry Papers Limited is therefore illegal and

invalid.

(ii) The Company has entered into an agreement with the Government of Pondicherry. Clause 3(c) of the agreement gives an option to the

Government to resume the land.

(iii) The allotted land was mortgaged by the Company earlier with the permission of Government of Pondicherry. The Company was therefore

aware of the need to obtain prior permission for sale of the land.

(iv) It is true that notice was not given before passing the impugned order. Even if notice was issued, no other order could have been passed in

view of Section 44-A of the Land Acquisition Act. The notice is therefore nothing but an empty formality.

(v) The intention by issuing the impugned note was only to avoid further registration of land and related transactions in view of Section 44A of the

Land Acquisition Act, 1894.

11. The learned counsel for the respondent made the following submissions.

(i) The Company initially made an application on 10 August 2006 for permission to sell the land. Since the request was kept pending, another

application in the nature of a reminder was given on 3 February 2009. Since the application was not rejected, permission is deemed to have been

granted.

(ii) The respondent is a bona fide purchaser for valuable consideration. The respondent was not aware of the agreement or the statutory

prohibition. The revenue records were mutated in favour of Pondicherry Papers Ltd., and therefore there was no occasion to doubt the

genuineness of the offer to sell the land by the Company to the respondent.

(iii) The construction and launching the project was inaugurated by the then Chief Minister on 14 November 2010 and the function was attended

by all the other Ministers and the Central Minister from the Union Territory of Pondicherry. The participation of those who were in the governance

of the State while launching the Mega Housing project by the respondent on the subject land indicated the decision of the Government not to

resume the land.

(iv) The respondent obtained planning permission for construction of 473 individual houses. Similarly, other statutory clearances were also

obtained before construction.

(v) The respondent sold as many as 339 houses and the Sub Registrar registered documents in favour of the respective purchasers. It was only

several years thereafter the impugned order was passed and that too without notice.

(vi) Since the impugned order would involve civil consequences, the first appellant should have issued a show cause notice to the respondent.

(vii) In case of issuance of notice, it would enable the respondent to plead and prove that the sale of land was legal and the Developer is a bona

fide purchaser for valuable consideration, unaware of the agreement executed by the vendor with the Government and that the exercise of option

for resumption itself is barred by limitation.

(viii) Section 44-A is no more in the Statute Book. The new Act has no such provision, except Section 100, which provides that no change of

ownership without specific permission from the appropriate Government shall be allowed. The impugned order on the basis of Section 44-A was

issued only after the repeal of the Land Acquisition Act, 1894. The order is therefore legally unsustainable.

(ix) The Civil Suit filed by the erstwhile land owner to declare the sale deed invalid is pending before the III Additional District Court, Pondicherry

in O.S. No. 138 of 2013. The plaintiff has also filed an application for injunction against further alienation. The first appellant by declaring the land

as Government land virtually decreed the civil suit. This declaration would affect the defence of the respondent in the Civil Suit.

12. The Company purchased an extent of 25 acres of land from open market and on its request, the Government of Pondicherry acquired 5.60.50

hectares of land in Bahour Taluk, after following the provisions contained in Part VII of the Land Acquisition Act, 1894. The Company paid the

Compensation pursuant to the award dated 15 June 1978.

13. The agreement executed by the Company with the Government of Pondicherry on 20 January 1977 contain the following provision for

resumption of acquired land.

3(c). That in the event of the company being wound up or in the event of failure on the part of the company to carry out the terms, agreement that

is to say the land shall be liable to be resumed and taken back by the said Government on repayment of the company of the amount of the award

as finally settled less the 15% awarded for compulsory acquisition or the estimated market value of the land at the time of resumption, whichever

shall be less and if there are any buildings on the land, the said Government may at their option either purchase the buildings on payment of their

estimated value at the time, or direct the company to remove the buildings at its own cost within such time as may be allowed by the said

Government.

14. The award, the agreement dated 20 January 1977 and the subsequent events are all part of the materials on record.

15. The Company after construction of factory buildings commenced its commercial production and finally after a period of operation for about 23

years, its activities were wound up with the permission of the Government of Pondicherry. The Company wanted to sell the entire land including

the acquired land.

16. The note prepared by the Deputy Collector (Revenue) on 25 September 2006 indicates that the Company has given a proposal on 10 August

2006 for grant of permission for sale of the land under Section 44-A of the Land Acquisition Act. The Revenue Department suggested three

options:

(i) Land to be used for other developmental purposes.

(ii) Land to be returned to the original owners.

(iii) Grant permission to the Company for sale of land.

17. The note submitted to the then Additional Secretary (Revenue) by his office wanted the above proposal to be submitted to the Council of

Ministers for taking a decision, after obtaining in-principle approval from the Hon''ble Chief Minister through Secretary (Revenue), Chief Secretary

and Revenue Minister.

18. The Collector-cum-Additional Secretary (Revenue) made a note on 17 October 2009 that Section 44-A of the Land Acquisition Act prohibits

sale of property without the prior sanction of Government. The Collector wanted the file to be marked to the Revenue Minister, through Secretary

(Revenue). The Chief Secretary in his note dated 20 October 2009 indicated that the Council of Ministers like to discuss the proposal, as it was a

policy matter. The proposal made by the Additional Secretary (Revenue) in the name of Secretary (Revenue) wanted the land to be resumed.

Clause 15 of the proposal wanted to solicit the approval of the Council of Ministers.

19. While so, through a representation dated 13 June 2010 sent by an organisation by name Pasumai Karanagal, Kirumampakkam, the Revenue

Department came to know of the action taken by the Company for sale of land without taking specific permission from Government. The then

Collector took immediate action to call for explanation from the concerned officials. The District Collector vide memorandum dated 5 August

2010 called upon the Pondicherry Planning Authority not to approve any Housing Scheme on the subject property. The Collector who is stated to

be the Special Secretary to Government vide memorandum dated 11 August 2010 directed the District Registrar, Pondicherry to instruct the

concerned Sub Registrar, not to register any document in respect of the acquired land. Similarly, by another memorandum dated 11 August 2010

the Special Secretary directed the District Registrar, Pondicherry to conduct an enquiry and submit a report within 48 hours, as to the

circumstances under which Registration of sale deed was permitted and name the officers involved in the registration of documents in contravention

of the agreement made with the Company. His successor appears to have not taken any follow up action for years together till receipt of summons

from the Civil Court in O.S. No. 138/2013.

20. Even though the Government of Pondicherry has not taken any decision to resume the land in exercise of its right conferred under Clause 3(c)

of the agreement dated 20 January 1977, the first appellant after several years issued a note dated 23 September 2014 calling upon the District

Registrar to indicate the land in the concerned registers as ""acquired land under Land Acquisition"".

21. The core question is whether the first appellant was correct in passing the order impugned in the writ petition without issuing notice, to the

affected party knowing very well that the property is presently in the possession of the respondent. The further question is whether it was open to a

party to the civil suit to pass orders to declare the land as Government land during the currency of the suit filed by the erstwhile land owner for the

very same relief of declaration of nullity of sale, without there being a valid order passed by the Government for resumption of land.

22. The impugned note dated 23 September 2014 proceeds as if it was brought to the knowledge of the first appellant that the acquired lands in

R.S. No. 108/1, 116 and 112/1 to 112/5 are being converted into residential plots by the respondent herein. Therefore it is clear that the first

appellant was in the know of things with respect to the identity of the developer. Even then the first appellant has not cared to issue notice to the

respondent.

23. The notice in a case of this nature is not an empty formality. The order would involve serious consequences to the affected party. In such cases

notice is a precondition.

24. The Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, explained the

expression ""Civil Consequences"" in the following words:

66. ... "Civil consequences" undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and

non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.

25. The Supreme Court in Uma Nath Pandey and Others Vs. State of U.P. and Another, , observed that even an administrative order which

involves civil consequences must be consistent with the rules of natural justice.

The Supreme Court said:

14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always

expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What

particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and

circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an

administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural

justice. The expression ''civil consequences'' encompasses infraction of not merely property or personal rights but of civil liberties, material

deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of

following the principles of natural justice is the prevention of miscarriage of justice.

26. Most recently, in Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise and Others the Supreme Court indicated the aspect of

procedural fairness namely, right to a fair hearing in the following words:

25..... Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide great humanising

factor intended to invest law with fairness to secure justice and to 4 Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New

Delhi and Others, prevent miscarriage of justice. The principles are extended even to those who have to take administrative decision and who are

not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is

not a matter of secondary importance as it is only by procedural fairness shown in the decision making that decision becomes acceptable. In its

proper sense, thus, natural justice would mean the natural sense of what is right and wrong.

27. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a

basic requirement in the Court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately

it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing

before taking a decision is necessary. It was, thus, observed in A.K. Kraipak''s case (supra) that if the purpose of rules of natural justice is to

prevent miscarriage of justice, one fails to see how these rules should not be made available to administrative inquiries.....

27. When this writ appeal was taken up on 7 October 2015 the learned Additional Government Pleader, Pondicherry submitted that the Revenue

Officials have made file notings indicating the decision to resume the land and as such there is substantial compliance of clause 3(c) of the

agreement dated 20 January 1977. We are not inclined to accept the said contention in view of the legal position with respect to the file notings

made by Government Officials.

28. Article 166(1) of the Constitution of India provides that all executive action of the State Government shall be expressed to be taken in the

name of the Governor. Similarly, executive action in the case of a Union Territory shall be expressed to be taken in the name of the Administrator

appointed by the President under Article 239 of the Constitution of India. As observed by the Supreme Court in State of Bihar and Others Vs.

Kripalu Shankar and Others, notings by an official in the departmental file or even noting by a Minster will not come within the meaning of

Executive Order under Article 166(1) of Constitution of India. None of the officials including the District Collector and Secretary to Government

(Revenue) were clothed with powers to direct resumption of land without there being an executive action taken by the Government of Union

Territory of Pondicherry in the name of the Administrator. The Revenue Officers like the Collector have discharged their duty and thereafter it was

the turn of the Council of Ministers and the administrator to take a suitable decision in the matter. However, the fact remains that no such decision

to resume the land has been taken by the Government of Union Territory of Pondicherry. At this juncture it would be appropriate to point out the

contention of the respondent that on 14 November 2010, the Housing Project on this land was launched by those who were in the Governance of

the Union Territory and the same is an indication of the decision of the Government not to resume the land notwithstanding the note made by the

Collector to take a policy decision by the cabinet in the matter.

29. There is no dispute that the office of the District Collector made a proposal in the year 2009 for resumption of land. The then Additional

Secretary (Revenue) cum Collector has taken a right decision vide his note dated 17 October 2009 to place the matter before the Cabinet. Even

thereafter the then Additional Secretary (Revenue) and other officers have passed several orders to protect the interest of the Government by

directing the registration department not to register further transactions in respect of the land in question and the planning authority not to approve

any housing scheme or any other scheme on the said land. Though officers like the then Collector have performed their part in a responsible

manner, as indicated above, policy decision was not taken by the Council of Ministers to resume the land with the approval of Administrator. Such

being the factual position, the question is whether timely action taken by the then Additional Secretary (Revenue) cum Collector and the concerned

officers in the Revenue Department for resumption of land by making file notings would amount to an order passed by the Government of

Pondicherry resuming the land from the Company.

30. The Supreme Court in Kripala Shankar (Cited Supra) while indicating the nature, scope and importance of file notings and the adverse effect

on the independent functioning of the civil service, which is essential to democracy, in case action is taken against officers on the basis of their

expression of opinion through such notings, observed that ""even if such notes amount to ex facie disobedience of the Court orders, it would not

amount to Contempt of Court.

The Supreme Court observed:

12..... Government functions by taking decisions on the strength of views and suggestions expressed by the various officers at different

levels, ultimately getting finality at the hands of the Minister concerned. Till then, conflicting opinions, views and suggestions would have emanated

from various officers at the lower level. There should not be any fetter on the fearless and independent expression of opinions by officers on

matters coming before them through the files. This is so even when they consider orders of courts. Officers of the Government are oftentimes

confronted with orders of courts, impossible of immediate compliance for various reasons. They may find it difficult to meekly submit to such

orders. On such occasions they will necessarily have to note in the files, the reasons why the orders cannot be complied with and also indicate that

the courts would not have passed those orders if full facts were placed before them. The expression of opinion by the officers in the internal files

are for the use of the department and not for outside exposure or for publicity. To find the officers guilty for expressing their independent opinion,

even against orders of courts in deserving cases, would cause impediments in the smooth working and functioning of the Government. These

internal notings, in fact, are privileged documents. Notings made by the officers in the files cannot, in our view, be made the basis of contempt

action against each such officer who makes the notings. If the ultimate action does not constitute contempt, the intermediary suggestions and views

expressed in the notings, which may sometimes even amount to ex facie disobedience of the court''s orders, will not amount to contempt of court.

These notings are not meant for publication.

13. ..... The contents of the notes file brought to court got communicated to the court because the court looks into it. It would be dangerous to

found an action for contempt, for the views expressed in the notes file, on the discovery of unpleasant or unsavoury notes, on a perusal of the notes

file by the court after getting them summoned. This would impair the independent functioning of the civil service essential to democracy. This would

cause impediments in the fearless expression of opinion by the officers of the Government. The notings on files differ from officer to officer. It may

well be that the notes made by a particular officer, in some cases, technically speaking is in disobedience of an order of the court or may be in

violation of such order but a more experienced officer sitting above him can always correct him. To rely upon the notings in a file for the purpose of

initiating contempt, in our view, therefore, would be to put the functioning of the Government out of gear.....

16. Viewed in this light, can it be said that what is contained in a notes file can ever be made the basis of an action either in contempt or in

defamation. The notings in a notes file do not have behind them the sanction of law as an effective order. It is only an expression of a feeling by the

concerned officer on the subject under review. To examine whether contempt is committed or not, what has to be looked into is the ultimate order.

A mere expression of a view in notes file cannot be the sole basis for action in contempt. Business of a State is not done by a single officer. It

involves a complicated process. In a democratic set up, it is conducted through the agency of a large number of officers. That being so, the noting

by one officer, will not afford a valid ground to initiate action in contempt. We have thus no hesitation to hold that the expression of opinion in notes

file at different levels by concerned officers will not constitute criminal contempt. It would not, in our view, constitute civil contempt either for the

same reason as above since mere expression of a view or suggestion will not bring it within the vice of sub-section (c) of Section 2 of the

Contempt of Courts Act, 1971, which defines civil contempt. Expression of a view is only a part of the thinking process preceding Government

action.

31. The Supreme Court in Shanti Sports Club and Another Vs. Union of India (UOI) and Others, , observed that notings recorded in the official

files by the officers of the Government at different levels and even the Ministers do not become decision of the Government unless the same is

sanctified and acted upon by issuing a formal order. The Supreme Court said:

43. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular

individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its

opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified

and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision

gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may

be, and authenticated in the manner provided in Article 77(2) or Article 166(2) . A noting or even a decision recorded in the file can always be

reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of

judicial review.

32. In Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, the Supreme Court held that inter-departmental

communications and notings in departmental files do not have the sanction of law, creating a legally enforceable right.

Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights

of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to

the person concerned.

33. The erstwhile land owner has already filed a civil suit in O.S. No. 138 of 2013 before the III Additional District Court, Pondicherry to declare

the sale deed executed in favour of the respondent invalid on account of the violation of the provisions of the agreement dated 20 January 1977.

He has also filed an application to restrain the respondent from alienating the subject property further. The suit is stated to be pending. The

Government of Pondicherry has already entered appearance in the said suit. In fact, only after the receipt of summons in O.S. No. 138 of 2013 in

December 2013, the then Collector woke up from slumber. The first appellant thereafter passed the order impugned in the Writ Petition.

34. The respondent has raised a question regarding limitation for the exercise of the option for resumption under clause 3(c) of the Agreement

dated 20 January 1977. Since the plaintiff in O.S. No. 138 of 2013 has placed reliance on the said provision, it is for the trial court to answer the

issue regarding the option to resume the land and the period of limitation for its exercise. In Short, it is for the civil court to adjudicate the issues

raised by the erstwhile land owner in O.S. No. 138 of 2013 in the light of the contentions taken by the respondent including waiver, limitation,

delay and laches. We make it clear that the above observations were all made on the basis of the materials available on record and this judgment

would not stand in the way of the Civil Court from deciding the suit on merits and as per law.

35. The order passed by the first appellant is unsustainable in law. We therefore agree with the conclusion reached by the learned Single Judge and

confirm the order under appeal, but for different reasons.

36. In the result, the intra court appeal is dismissed. No costs.